

Decision 02-04-063

April 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Examine the Commission's Future
Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

ORDER MODIFYING AND DENYING REHEARING
OF DECISION 01-11-066
AND DENYING MOTION TO STAY

Pacific Gas & Electric Co. (PG&E); Southern California Edison Co. (SCE); San Diego Gas & Electric Co. (SDG&E) and Southern California Gas Co. (SoCalGas) have filed for rehearing of Interim Decision (D.) 01-11-066. This interim decision was issued in R. 01-08-028 which was instituted on August 23, 2001 to examine the Commission's future energy efficiency policies, administration and programs. It dealt with two of the four goals included in the OIR: the establishment of (1) criteria for utilities and non-utilities to use in proposing and applying for funding of new energy efficiency programs for 2002 and later;¹ and (2) adoption of a revised set of energy efficiency policy rules

¹ Funding for electricity efficiency programs is secured from the Public Goods Charge, which is a separate rate component as provided for in Public Utilities Code sec. 381 (a). These programs are further provided for by the Reliable Electric Service Investments Act, Public Utilities Code secs. 399-399.15, enacted in 2000. Section 399.4(a)(1) provides that "it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority," in order to, *inter alia*, reduce customer demand, and contribute to the reliable and safe operation of the electric grid. For the year 2002 electricity efficiency programs, the Commission is directed by Public Utilities Code sec. 399.8 to order SDG&E, SCE, and PG&E to collect \$228 million in rates, of which \$135 million is for renewable energy, and \$62.5 million is for research and development. The Public Goods Charge for gas programs is secured by a surcharge levied on natural gas consumption as provided for in Public Utilities Code secs. 890-900.

related to the Commission's oversight of energy efficiency programs.² The two other goals, future program administration and past program evaluation, were left for resolution in subsequent decisions.

In D. 01-11-066 (the Decision) we concluded that statewide programs will continue to be the backbone of energy efficiency policy for 2002, and that they must be uniform, with consistent terms and requirements in all utility service areas. Filing schedules for utility and non-utility program proposals were set; and also for the filing of comments. After evaluation of the proposals and submission of recommendations by the Assigned Commissioner and Administrative Law Judge (ALJ) and/or the Energy Division, the Decision provided that approval of the recommended proposals will be determined by Commission vote. With regard to non-utility programs, it included directions to the major investor owned utilities (IOUs), i.e., SCE, PG&E, SDG&E, and SoCalGas, to execute standard contracts with those non-IOU providers awarded funding. Certain standard contract terms for these third-party contracts were prescribed in the Decision and a meet and confer process was established in order to discuss, review, and modify these terms. The IOUs were directed to coordinate the meet and confer sessions and to file monthly accounting reports with the Commission for conducting, monitoring, and implementing oversight review of the expenditure of energy efficiency funds. It provided that any disputes arising from the meet and confer sessions are to be resolved pursuant to directions from the ALJ. Contract provisions were required to cover dispute resolution; withdrawal or withholding of funds in the event of complete or partial program failure; the conducting of financial and performance audits; gathering public feedback; responding to complaints; periodic reporting during and at the conclusion of the contract period; payment terms, conditions, process and schedule; and disbursement of funds upon the meeting of certain

² The policy rules are set forth in the Energy Efficiency Policy Manual (Attachment 1 to the Decision). This Manual supersedes the "Adopted Policy Rules for Energy Efficiency Activities" adopted in Commission Resolution E-3592 and modified in subsequent decisions.

performance thresholds. Finally, the IOUs were expressly made responsible for day-to-day contract administration; and were allowed up to 5 percent of each contract amount as compensation for such administration, subject to reasonableness review and refund if the IOUs' efforts raise concerns. (Decision, at p. 31.)

In their applications for rehearing, the IOUs contend that the Decision results in fundamental changes in the structure and implementation of energy efficiency programs, which include the following legal errors:

- (1) Because, with regard to contracts between the IOUs and third party implementers of energy efficiency programs, the Commission establishes the contract bidding criteria and procedures for program proposals, receives and evaluates program proposals, selects program implementers and resolves contract disputes, the Decision unlawfully evades the state contracting laws, since in the view of the IOUs, the contracts are really the Commission's contracts and should be signed by it after they have been reviewed and approved under the public contracting laws as provided for in the Public Contract Code.
- (2) The Commission does not possess the jurisdiction to order the IOUs to execute contracts with third party suppliers of goods or services.
- (3) The contracts mandated by the Decision are unconscionable and therefore void as a matter of law because they lack the essential element of consent by the utilities.
- (4) Evidentiary hearings are required because the Decision radically altered the nature, scope and responsibilities of the administrators (the IOUs) of energy efficiency programs. Therefore, earlier decisions were changed in violation of Public Utilities Code Sections 1701.1, 1705, and 1708.
- (5) The Decision's adoption of a 15 percent "holdback" of program implementation costs undertaken by the IOUs in administering the contracts is arbitrary and a violation of due process because it fails to provide the circumstances or timing under which the holdback would be "rebated" to the utility;

and the Decision is unreasonable because it fails to provide interest on the holdback amounts to the IOUs or any possible recovery of performance incentives from future rates.³

Two parties, the Residential Service Companies' United Effort (RESCUE) and SESCO, Inc. filed a joint response opposing the applications for rehearing

In addition, SCE simultaneously filed a Motion for Stay of Ordering Paragraph 8 of the Decision. SCE seeks a stay of the requirement that it and the other utilities prepare proposed contract terms to be included in the contracts between themselves and implementers, pending resolution of its Application for Rehearing. In the Motion, SCE states that granting rehearing is not necessary if the Commission would clarify the Decision regarding its contract requirements. In particular, SCE asks that the Commission make clear:

- (1) that the IOUs will be compensated for all reasonable costs incurred in administering the third-party contracts;
- (2) that the total compensation to be paid to the IOUs as a contract administration fee shall not be contingent upon the success or failure of the implementers' proposal or performance;
- (3) the role and responsibilities of the Energy Division (versus the IOUs) in connection with oversight of administration of the implementers' work; and
- (4) that the IOUs shall incur no legal liability for third parties' acts or omissions in the performance of the energy efficiency proposals selected.

We have carefully considered all of the IOUs' contentions and are of the opinion that good cause for rehearing has not been demonstrated.

Accordingly, we deny these applications for rehearing and the motion to stay.

However, as explained below, we will modify the Decision to include additional

³ Because we have changed the holdback provision in our recent D.02-03-056 this issue is moot.

Findings of Fact and Conclusions of Law reflecting support for our authority to require the IOUs to contract with third-party providers of energy efficiency programs mandated in the Public Utilities Code, and on notice and opportunity to be heard.

I. UNLAWFUL EVASION OF THE PUBLIC CONTRACT LAWS

SCE and PG&E assert that the Decision unlawfully evades the state contracting laws because the IOUs are required to execute program contracts with third-party implementers when, according to the IOUs, the contracts are really the Commission's because it or the Commission staff will control all the significant steps in execution and performance of the contracts. The Applicants rely on several prior Commission decisions, which they interpret as concluding that the state procurement rules apply in this situation.⁴

We do not agree. The prior decisions are not directly applicable. They deal with the establishment of independent boards, (the Independent Board for Energy Efficiency and the Governing Board for Low Income Programs), with membership that included both Commission staff and non-state employees to oversee the administration of public programs under electric utility deregulation; governance of these boards as adjuncts of the Commission, including our express direction to comply with state procurement rules; and also procedures for obtaining staff resources. D.98-07-036 clarified that the boards are adjuncts of the Commission; and therefore should take immediately all reasonable steps "to transfer civil service responsibilities previously performed" by consultants to civil service employees and to hire employees to accomplish the transfer (Ordering Par. 9, D.98-07-036, mimeo, p. 10)

These decisions relate to the organization, personnel staffing and operating procedures governing advisory boards created by the Commission and

⁴D.97-02-014, 70 CPUC 2d 774; D.97-04-044, 71 CPUC 2d 673, D.97-05-041; 72 CPUC 2d 507; and D.98-07-036 issued July 2, 1998.

which are temporarily serving as a subordinate arm of the Commission. They are not relevant to the issue whether we can direct the IOUs to enter into contracts with third parties to execute a utility related program mandated by the Legislature. The enactment of the Reliable Electric Service Investment Act (Public Utilities Code sections 399-399.9) is clear that prudent investments in energy efficiency improvements are essential for “safe reliable electric service.” (Section 399 (b) and (c)(3)). Section 399.8 imposes a “nonbypassable systems benefits charge” to fund “energy efficiency, renewable energy, and research, development and demonstration.” (Section 399.8 (b)(1)). Therefore, energy efficiency programs are statutorily mandated and the Commission has oversight responsibilities for the collection of the prescribed funding amounts and of the implementation of the IOU programs. (Section 399 (d) and (e)).

Such oversight authority reasonably includes governance of how the utilities should carry out the programs, including to what extent third party implementers are to be involved. The regulatory authority provided in Public Utilities Code sections 701, 702, 728, 761, 762 and 770 provide the necessary foundation for directing the IOUs to utilize non-utility providers for part of the program. These sections provide the authority to determine or change the just and reasonable rates, classifications, rules practices, contracts, equipment, facilities, service, and methods to be enforced and employed by public utilities. The exercise of this authority is cognate and germane to the regulation of public utility service. Consumers Lobby Against Monopolies v. P.U.C. 25 Cal.3d 891 (1979); Morel v. Railroad Comm. 11 Cal.2d 488. (1938)).

II. COMMISSION AUTHORITY TO ORDER UTILITIES TO EXECUTE CONTRACTS WITH THIRD PARTIES FOR THE PROVISION OF ENERGY EFFICIENCY SERVICES

The IOUs’ primary contention is that the Commission lacks authority to require the utilities to sign and be responsible for third-party contracts that

include terms mandated by it. They rely on Pacific Tel. & Tel. Co. v. P.U.C., 34 Cal.2d 822, 215 P. 2d 441 (1950) (“Pacific Telephone”), in which the Supreme Court concluded that the Commission, in exercising its ratemaking authority, could not limit the amount of fees paid by Pacific Telephone to its parent American Tel. & Tel. Co. (AT&T) under a contract for management and accounting services. Although the IOUs recognize that this decision has subsequently been questioned in General Tel. Co. v. P.U.C., 34 Cal.3d 817, 670 P. 2d 349 (1983) (“General Telephone”), they argue that Pacific Telephone has not been overruled and has in fact been followed as recently as 1986 in Stepak v. American Tel. & Tel. Co., 186 Cal.App.3d 633, at 641-645, 231 Cal. Rprt. 37 (1986).

Although the IOUs are correct that the Pacific Telephone decision has not been overruled, the Supreme Court in the General Telephone decision subsequently limited its application by holding that the same result of the Commission’s decision could have been attained by simply disallowing the excessive fees Pacific Telephone was paying to AT&T. (General Tel. Co. v. PUC, *supra*, 34 Cal.3d at 827) The Court concluded in General Telephone that our order compelling competitive bidding for acquisition of central office equipment was a valid exercise of our authority under Public Utilities Code sections 701, 728, 761 and 762 because it was undertaken to improve services rendered to General’s customers. These statutes, combined with the authority established in Sections 381 and 382, provide the necessary support for our directives in the Decision. As in the General Telephone case, the Decision’s directives are designed to achieve better energy efficiency services for the IOUs’ customers by including third-party providers for some of the services, and by initiating the elimination of the IOUs’ inherent conflict of interest between reducing sales through energy efficiency and maintaining market share in the new competitive market. In sum, the Commission’s directives come within the parameters laid down in the more recent General Telephone decision.

Next, the IOUs cite the Stepak decision, *supra*, in support of their position. This case dealt with the Commission's consideration of the fairness of a merger to minority shareholders in a merger approval proceeding. The Court of Appeal found no reason to prevent the minority shareholders from prosecuting their action in superior court since it did not interfere with any Commission regulatory proceeding or policy. Therefore Stepak, like Pacific Telephone, did not involve Commission action to directly achieve better service to the utility's customers. However, the instant proceeding clearly does involve this consumer-utility relationship, since energy efficiency programs are designed to aid customers by reducing consumption; and thereby assisting in the avoidance of service interruptions, as well as reducing customers' costs. Therefore, the Stepak decision is not controlling authority.

The IOUs also cite D.83-09-024, 12 CPUC2d 525 (In Re Pacific Tel. & Tel. Co.) as supporting their position that, under Pacific Telephone, the Commission can only supervise utility contracts that involve the consumer-utility relationship. They then assert that the contract directives in the Decision do not relate to this relationship because they compel the utilities to contract with suppliers of energy efficiency services to the general public, and not for public utility purposes.

This view is also mistaken. D.83-09-024 upholds the Commission's authority to require a utility to offer for sale to its customers telephone equipment located on the customers' premises in accordance with a deregulation order issued by the Federal Communications Commission. It distinguishes the Supreme Court's Pacific Telephone decision dealing with the direct consumer-utility relationship; and then it upholds the Commission's authority to order such sales through tariff filings, relying on Public Utilities Code sections 728, 761, 762 and the general authority provided in Section 701. (12 CPUC 2d at 534). It is reasonable to conclude that the Decision's requirements for third party energy efficiency contracts are to help carry out the Legislature's directives in the

Reliable Electric Service Investments Act; and these contracts are obviously related to achieving improved cost-effective services to the IOUs' customers, thereby assisting in maintaining reliable utility service in a period of uncertain electricity supply. Therefore, the Decision comes well within the consumer-utility relationship recognized and upheld in General Telephone.

III. COMMISSION AUTHORITY TO REQUIRE UTILITIES TO PROVIDE CONTRACT ADMINISTRATION SERVICES

PG&E argues that the Decision attempts to order the IOUs to provide contract administration services. It maintains that companies providing such services are not designated as public utilities in the Public Utilities Code; that it has not dedicated its resources to provide such administration; and that such administration has nothing to do with the provision of energy distribution services.

In support of this contention, it relies on the Commission's decision in Holocard v. Pac. Tel & Tel. Co. (1981), D. 92791, 5 CPUC 2d 649, corrected by D. 92980, 6 CPUC 2d 87, modified and rehearing denied by D. 93362, 6 CPUC 2d 423. In Holocard, the Commission found that Pacific Telephone had not dedicated its property to provide billing service to Holocard, a credit card verification company. However, reliance on Holocard is misplaced. Pacific Telephone had not dedicated any resources to provide billing services for non-utilities. But, with regard to energy efficiency programs and services, PG&E has been providing such services for years, including some by means of contracts with third parties. Contract administration has obviously been a part of such programs. As stated by RESCUE and SESCO, Inc. "Contract administration is a procedure that is necessary to virtually all commercial functions" (RESCUE & SESCO, Inc. Response to Utility Applications for Rehearing, p.18).⁵

⁵ PG&E also cites TURN v. P.G.&E. Co. (1983) D.83-12-047, 13 CPUC 2d 561, at 568 as a decision that discusses Holocard favorably. However, this decision, which deals with the use of PG&E's billing envelope space, finds Holocard "clearly inapposite" since a new public utility service was not involved. Likewise, the provision of energy efficiency services by means of contracts is not a new service for California IOUs.

IV. THE MANDATED CONTRACTS ARE NOT UNCONSCIONABLE

The IOUs complain that the Decision attempts to mandate contracts that they have expressed unwillingness to enter into. Therefore, in their view, any such contracts lack mutual consent and are void as a matter of law, citing Civil Code sections 1550 and 1565.⁶ We do not agree for several reasons. First, the Civil Code Sections cited by the IOUs are applicable to the contracting parties, namely the particular IOU and the third party implementer. They are not applicable to the regulator-regulatee relationship and the authority placed with the Commission by the Legislature to implement these programs. Second, the Decision only orders the IOUs to serve proposed standard contract terms on the parties, which are subject to revision in meet and confer sessions. Agreed upon contract terms cannot be said to be unconscionable. And contract provisions that remain in dispute are to be reported to the ALJ, who will thereafter provide direction to resolve any remaining differences. (D.01-11-066, p. 30; Ordering Par. 8).⁷ Therefore, it is expected that the IOUs' position will receive consideration before any determination is made. Finally, this contention overlooks the important fact that the funds to be disbursed under the third party contracts are not the property of the IOUs, but instead are monies the IOUs have collected in rates by means of the Public Goods Charge for a specific purpose designated by the Legislature. The nature of the IOUs' role in this regard is virtually that of a trustee.

⁶ These sections set out the essential elements required for a valid contract and provide that contractual consent must be "free, mutual and communicated to each other."

⁷ SCE complains that the Decision does not inform it as to how many contracts it will be required to execute with implementers; whether the IOUs will be allowed to recover their labor costs; fails to specify the role of the Energy Division, or address financial responsibility for damages arising out of the contracts. Similarly, SDG&E and SoCalGas maintain that the Commission's controls, containing unwelcome terms and conditions, are so unreasonably unfavorable to them that the result is unconscionability and unlawful interference with the right to contract. These subjects are typical ones for discussion and resolution under the meet and confer procedure prescribed in the Decision.

V. EVIDENTIARY HEARINGS

Next, SDG&E and SoCalGas assert that the Decision violates Public Utilities Code sections 1701.1, 1705 and 1708 because it radically alters earlier decisions, specifically D.01-01-060, which allowed the IOUs to negotiate contract terms and conditions for contracts with third party implementers.⁸

This assertion overlooks the fact that no hearings were held in the issuance of D.01-01-060, which approved the IOUs energy efficiency programs for 2001. Parties were given the opportunity to file comments and reply comments, but it was not conducted with evidentiary hearings. Accordingly, under Public Utilities Code section 1708.5(f), revisions or changes in prior decisions not involving a hearing may be made without providing an evidentiary hearing as long as it follows notice and comment rulemaking procedures.⁹ Moreover, as RESCUE and SESCO, Inc. note, the IOUs did not appeal the determination that the underlying proceedings constituted a quasi-legislative proceeding. Therefore, this contention is without merit.

VI. ALLEGED VIOLATION OF DUE PROCESS

Next SDG&E and SoCalGas claim that they were denied due process; i.e. notice and the opportunity to be heard. They claim that the Commission unilaterally instituted “sweeping changes to the way in which energy efficiency programs are managed, funded and delivered to California’s energy consumers.” (SDG&E and SoCalGas App. For Rehearing, p. 7).

⁸Section 1701.1 provides that the Commission shall determine whether a proceeding requires a quasi-legislative, adjudication or ratesetting hearing. Section 1705 applies to complaint cases and provides that the parties and other interested persons shall be “entitled to be heard and to introduce evidence.” Section 1708 authorizes the Commission to alter or rescind any decision it has made provided that notice is given to the parties with the opportunity to have a hearing.

⁹Section 1708.5(f) states:

“Notwithstanding Section 1708, the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.”

However, this claim overlooks the fact that the OIR expressly referred to an earlier decision, D.99-03-056, which stated that IOU administration of energy efficiency programs should not continue past December 31, 2001. Then a draft decision was issued on October 26, 2001 which was subject to two rounds of comments. About 40 parties, including the IOUs, filed comments. Finally, although the Decision announced changes in the programs, it clarified that the IOUs will be responsible for day-to-day contract administration while we examine a “range of energy efficiency administrative options during the course of this proceeding”. (Decision, p. 31). Given these facts, we conclude that the IOUs had notice and the opportunity to be heard; and there is no validity to this claim of legal error.

VII. MISCELLANEOUS OBJECTIONS

SDG&E and SoCalGas object to the adoption of a 15 percent “holdback” of program implementation costs and to the absence of a provision providing interest on the holdback amounts. They also claim that the Decision is arbitrary and unreasonable because it does not allow possible recovery of performance incentives from future rates. Similarly, SCE requests issuance of a clarifying ruling regarding certain contract terms, liability for third parties, acts or omissions, etc.

None of these objections establish legal error. The appropriate procedural vehicle to make such objections and requests is to file petitions for modification, or raise them at meet and confer sessions.

VIII. FINDINGS OF FACT

In its application for rehearing, PG&E points out that the Decision contains no findings of fact regarding its direction that the IOUs execute third party contracts for implementation of the 2002 program and provide day-to-day administration of them. We note that the Decision sets forth only one finding of fact. It refers to program rules being helpful to IOUs and interested parties for

tailoring their proposals to the Commission's policy goals. In the interest of clarification, we will add findings of fact and conclusions of law to set out the basis for our conclusions in the Decision.

IX. SCE MOTION FOR STAY

SCE simultaneously filed a Motion to Stay Enforcement of Ordering Paragraph 8 with its Application for Rehearing. This paragraph requires the IOUs to file no later than December 10, 2001, proposed standard terms for contracts between the IOUs and certain third party providers of energy efficiency services prior to a meet and confer session to be held no later than December 19, 2001. SCE states that on December 26, 2001, the ALJ directed the IOUs to file an alternate version of the contract terms, which does not limit their role to being only a payment agent. SCE further states that the ALJ directed them to file contracts by January 10, 2002 that include provisions that are adverse to SCE's financial and legal interests.

SCE claims that the factors supporting the granting of a stay are met, as follows:

1. Significant harm in the form of unnecessary financial expense and a waste of time will result if the IOUs have to prepare contract terms that fail to provide the necessary authority to compel compliance by the third party providers.
2. No prejudice to others will result by delaying preparation of alternate contract terms and negotiations on them as directed by the ALJ; and the competitive bidding process can continue without resolution of the contract term issues.
3. SCE believes there is a strong likelihood of success on the merits set forth in its Application for Rehearing for the reasons stated therein.
4. Balancing the hardships involved as set out above justifies granting a stay of further efforts to develop an appropriate program contract.

No response to SCE's motion was filed; and the other IOUs did not expressly join in seeking it.

Two factors are relevant in determining whether a stay request is meritorious: (1) whether the moving party will suffer imminent irreparable harm if the stay is denied; and (2) whether the moving party is likely to prevail on the merits. The motion is not convincing with regard to the claim of any imminent irreparable harm. Eventually, contract terms will be required to implement the program. Delaying discussions and negotiations to resolve differences serves no useful purpose. Furthermore, given the conclusion that the allegations of legal error in the applications for rehearing lack merit there is no justification for granting the stay.

THEREFORE IT IS ORDERED that:

1. D.01-11-066, p. 33, is modified to delete the Findings of Fact section at the top of the page, and is replaced by the following section:

“FINDINGS OF FACT”

1. On August 23, 2001, the Commission issued this OIR to examine future energy efficiency policies, administration, and programs, including setting out a revised set of policy goals and objectives governing oversight of these programs and determining the appropriate administrators of these programs. The category of this rulemaking proceeding was determined to be “quasi-legislative” as defined in Rule 5(d) of the Commission's Rules of Practice and Procedure. The IOUs did not appeal this determination. A proposed decision was issued on October 26, 2001. About 40 parties, including the IOUs, filed comments.
2. The OIR noted that in D. 99-03-056 the Commission stated that the “Interim utility administration of energy efficiency programs should not continue past December 31, 2001.” The OIR set forth four goals for the proceeding, including review of utility administration of energy efficiency programs. However, due to time considerations, it stated on page 2 that the IOUs should continue to assume responsibility for such program administration.

3. D.00-07-007, mimeo, pp. 6-9, 214-215, describe problems that have arisen with interim utility administration of energy efficiency programs; the effort to establish the transition to independent administration; and suspension of this transition.
 4. D.01-01-060, mimeo, p. 12, which approved the utilities' 2001 energy efficiency programs and budgets, stated that "the utilities have not been able to reach a substantial number of consumers with their energy efficiency programs"; and that third parties "with established community ties" can assist in promoting such programs. This decision found (Findings of Fact 10 and 11) that third parties are a source for new and creative energy efficiency programs; and that the utilities "have not followed our prior directives to increase funding for general and targeted third party initiatives."
 5. Rules regarding the Commission's energy efficiency programs will help utilities and other parties seeking energy efficiency funding tailor their proposals to the Commission's policy goals and objectives."
- 2 .D.01-11-066, p. 33, is modified to add two Conclusions of Law,

follows:

- "3. For the effective period of this Interim Decision, it is reasonable to have the utilities be responsible for day-to-day contract administration for all electric and gas Public Goods Charges-funded energy efficiency programs.
 4. Under the authority provided by Public Utilities Code sections 381, 399-399.15, 701, 702, 728, 761, 762, 770, and 890-900 the Commission may order utilities to execute contracts with third parties for the provision of energy efficiency services."
3. Rehearing of D.01-11-066, as modified, is denied.

4. The Motion to Stay Ordering Paragraph 8 of D.01-11-066 is denied.
5. This proceeding shall remain open.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners